

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JUAN VARGAS, individually, and on behalf of all  
others similarly situated,

Plaintiffs,

Civil Action No. 15-CV-  
5101

-against-

CHARLES W. HOWARD and CALL-A-HEAD CORP.,

Defendants.

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**DECLARATION OF ANTHONY PORTESY IN SUPPORT OF PLAINTIFFS' MOTION  
TO CERTIFY A RULE 23 CLASS ACTION AND AUTHORIZE ISSUANCE OF  
NOTICE OF PENDENCY TO CLASS MEMBERS**

ANTHONY PORTESY, an attorney duly admitted to practice law in the Southern District of New York, states as follows:

1. I am an attorney at Slater Slater Schulman LLP, which represents Plaintiff as co-counsel in this action and am thoroughly familiar with the facts concerning this action.
2. I submit this declaration in support of Plaintiffs' Motion to Certify a FRCP Rule 23 Class Action and Authorize Issuance of Notice of Pendency to Class Members.
3. The parties met and conferred before the Honorable Gregory H. Woods on December 29, 2016 concerning this motion pursuant to the Court's individual rules. The Court granted leave to file the enclosed Motion for Class Certification after the result of the March 8, 2017 mediation.
4. Plaintiffs filed this action on June 30, 2015 against Defendants alleging Defendants violated the Fair Labor Standards Act and New York Labor Law by failing to pay

Plaintiffs one and one half times their regular hourly rate for ALL hours worked in excess of forty (40) hours per week.

5. On August 28, 2015, Plaintiffs filed their motion for conditionally certification as a collective action pursuant to 29 U.S.C. Defendants opposed the motion and filed their opposition on September 18, 2015. On February 1, 2016, the Court granted Plaintiffs' motion.
6. Notice to the collective was issued on March 21, 2016 and approximately 96 individuals have filed consents to join.
7. Defendants deposed eight of those Plaintiffs.
8. Since initiating this lawsuit, named Plaintiff Juan Vargas, opt-in Plaintiff Gerolamo Genova, opt-in Plaintiff Edward Kubinski, opt-in Plaintiff Peter Fowler, opt-in Plaintiff Ricardo Whittaker, and opt-in Plaintiff Peter Fowler have demonstrated a commitment to this case and to the class they seek to represent by assisting with the preparation of the complaints, sitting for depositions, answering interrogatories, and producing documents imperative to this litigation.
9. Defendants have produced a list previously provided a list of more than 550 portable service toilet technicians ("PTST") for the three years preceding the date this action was filed in response to the Court's Order on the conditional certification motion.
10. Annexed hereto as Exhibit A is a copy of Plaintiffs' First Amended Supplemental Class and Collective Action Complaint.
11. Annexed hereto as Exhibit B is a copy of excerpts of Defendants' Time Records for proposed class representatives, opt-in Plaintiff Gerolamo Genova, opt-in Plaintiff Edward Kubinski, opt-in Plaintiff Peter Fowler, opt-in Plaintiff Ricardo Whittaker, and opt-in

Plaintiff Peter Fowler that show hours worked in excess of forty (40) per week by each proposed class representative.

12. Annexed hereto as Exhibit C is a copy of Defendants' Time Records for named Plaintiff Juan Vargas for the week of August 14, 2010 to August 20, 2010 that shows Vargas worked over forty (40) hours in that week.

13. Annexed hereto as Exhibit D is a copy of named Plaintiff Juan Vargas' pay stub for the week of August 14, 2010 to August 20, 2010 that shows Vargas was paid only for forty (40) hours in that week despite Defendants' own records that show working over forty (40) hour.

14. Annexed hereto as Exhibit E is the Call-A-Head home office sign that instructs employees "When you work the 5<sup>th</sup> day you do not punch in."

15. Annexed hereto as Exhibit F is the Plaintiffs' First Request for Production of Documents issued to Defendants on November 4, 2015.

16. Annexed hereto as Exhibit G is the Employee Report for Plaintiff Juan Vargas.

17. Annexed hereto as Exhibit H is the Employee Report for Plaintiff Gerolamo Genova.

18. Annexed hereto as Exhibit I is the Employee Report for Plaintiff Peter Fowler.

19. Annexed hereto as Exhibit J is the Employee Report for Plaintiff Ricardo Whittaker.

20. Annexed hereto as Exhibit K is the Employee Report for Plaintiff Edward Kubinski.

21. Annexed hereto as Exhibit L is a copy of the Complaint in the action known as *Paulino v. Call-A-Head Corp. and Howard*, 2008-cv-00302 (E.D.N.Y.).

22. Annexed hereto as Exhibit M is a copy of the Second Amended Complaint in the action known as *Maloof v. Call-A-Head Corp. and Howard*, 2008-cv-02873 (E.D.N.Y.).

23. Annexed hereto as Exhibit N is a copy of the Complaint in the action known as *Ramirez v. Call-A-Head Corp. and Howard*, 09-cv-00568 (E.D.N.Y.).
24. Annexed hereto as Exhibit O is a copy of the Complaint in the action known as *Sabino v. Call-A-Head Corp. and Howard*, 2010-cv-00317 (E.D.N.Y.).
25. Annexed hereto as Exhibit P is a copy of the Amended Complaint in the action known as *Carman v. Call-A-Head Corp. and Howard*, 2013-cv-03429 (E.D.N.Y.).
26. Annexed hereto as Exhibit Q is a copy of the Complaint in the action known as *Aduleit v. Call-A-Head Portable Toilets, Inc.*, 2014-cv-03531 (E.D.N.Y.).
27. Annexed hereto as Exhibit R is a copy of the Complaint in the action known as *Ippolito v. CallAHead Corp and Howard*, 15-cv-02002 (E.D.N.Y.).
28. Annexed hereto as Exhibit S is the Order authorizing notice to the collective in the action known as *Maloof v. Call-A-Head Corp. and Howard*, 2008-cv-02873 (E.D.N.Y.).
29. Annexed hereto as Exhibit T is a copy of the Defendants' Letter to the Court regarding settlement in the action known as *Maloof v. Call-A-Head Corp. and Howard*, 2008-cv-02873 (E.D.N.Y.).
30. Annexed hereto as Exhibit U is the Silva Settlement Agreement dated August 29, 2016.
31. Annexed hereto as Exhibit V is a copy of the Complaint in the action known as *Theoharis v. Call-A-Head Corp and Howard*, 16-cv-04475 (E.D.N.Y.).
32. Annexed hereto as Exhibit W is the Declaration of Daniel Falcone submitted in *Silva v. Call-Ahead Corporation and Howard*, 16-cv-4815 (E.D.N.Y.).
33. Annexed hereto as Exhibit X are the cited portions of the Deposition of Defendant Charles W. Howard in this action, *Vargas v. Howard*, 15-cv-5101 (E.D.N.Y.).

34. Annexed hereto as Exhibit Y is the Notification of Pay Rate for opt-in Plaintiffs Jeury Marte, Kengman Jimenez, and Arthur Lester.
35. Annexed hereto as Exhibit Z is the firm resume for Slater Slater Schulman LLP.
36. Annexed hereto as Exhibit AA is the firm resume for the Marlborough Law Firm P.C.
37. Annexed hereto as Exhibit BB is the declaration and *curriculum vitae* for Plaintiffs' retained expert Russell Kranzler CPA, CR.FA, CFF.
38. Annexed hereto as Exhibit CC is the Answer to Plaintiffs' First Amended Supplemental Class and Collective Action Complaint.
39. I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct. This declaration is executed on the twenty second day of March, 2017, in Melville, New York.

A handwritten signature in black ink, appearing to read 'Anthony Portesy', is written over a horizontal line.

Anthony Portesy, Esq.

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